



# EMPLOYMENT LAW AND DISPUTE RESOLUTION ALERT

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CLIFFE DEKKER HOFMEYR

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KIETI LAW LLP, KENYA

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### Fraud unravels all, including contracts of employment

The insidious effect of fraud permeates the entire legal system. This is because it renders contracts voidable at the instance of the innocent party; is a crime; excludes the effects of an ouster clause in legislation; and nullifies a contractual exemption clause which purports to exclude a party from the consequences of fraudulent conduct. Its effects are therefore far-reaching. This was recently illustrated in *Umgeni Water v Naidoo and Another* (11489/2017P) [2022] ZAKZPHC 80 (15 December 2022), in the context of employment relationships.



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## Fraud unravels all, including contracts of employment

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The facts are eventful: Mr Naidoo was hired by Umgeni Water for eight years on a graduate development programme specially designed for graduates who held a bachelor's degree in engineering. Naidoo had (fraudulently) misrepresented to Umgeni Water that he had a BSc degree in engineering from the University of KwaZulu-Natal. Following his completion of the graduate development programme, Naidoo successfully applied for the position of process technician with Umgeni Water, where he was asked to present his chemical engineering degree for verification purposes. During the verification process it was discovered that Naidoo did not hold a bachelor's degree in engineering and that his representations were false and fraudulent.

### Seeking restitution

Having failed to submit proof that he held a bachelor's degree, Naidoo submitted a resignation letter to Umgeni Water, which was rejected because Umgeni Water had already initiated disciplinary proceedings against him. A few days later Naidoo submitted a second resignation letter indicating his intention to resign with immediate effect, citing an illness that posed a health risk. Umgeni Water accepted this letter of resignation. Umgeni Water then instituted action proceedings in the High Court against Naidoo seeking restitution in relation to payments made to him during his period of employment and a declaration that the contract that was entered into with Naidoo was *void ab initio*.



## Fraud unravels all, including contracts of employment

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The court had to first determine whether Naidoo possessed a bachelor's degree in engineering. It found that the degree certificate submitted by Naidoo was a forgery, as were the academic results upon which he relied. The court held that Naidoo had falsely represented his qualifications in order to secure employment benefits, which was achieved by him to the detriment of Umgeni Water. He received these benefits as a result of his fraudulent conduct. The court relied on the often quoted rationale that *"no court in this land will allow a person to keep an advantage which he has obtained by fraud"*.

In determining whether the contract entered into by Umgeni Water and Naidoo was void or merely voidable, the court held that the contract was voidable at the instance of Umgeni Water. It further held that once Umgeni Water proved fraud had been perpetrated against it by Naidoo and that the contract had been terminated, it became entitled to restitution, absent any evidence that restitution would be unjust. Accordingly, the court ordered Naidoo to pay Umgeni Water R2,203,565.04 and held that Umgeni Water was entitled to execute the judgment against Naidoo's provident fund.

The case is a further demonstration of the accepted legal position that fraud vitiates every transaction known to the law, including employment contracts. It therefore follows that a contract of employment induced by fraud committed by an employee will be voidable at the instance of the employer. The employer may be entitled to restitution and claim back the benefits received by the employee as a result of the fraud. The employer may also be entitled to execute a restitution order against the employee's provident fund.

[Vincent Manko, Biron Madisa and Karabo Nemudibisa](#)

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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